

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

ATLANTA TYPOGRAPHICAL
UNION NO. 48/CWA 14320

Union-Petitioner

and

Case 10-UC-232

THE ATLANTA JOURNAL-CONSTITUTION

Employer

DECISION AND ORDER DISMISSING PETITION

The Atlanta Journal-Constitution, herein called the Employer, is a Delaware corporation engaged in the publication of a newspaper, with an office and place of business in Atlanta, Georgia. Atlanta Typographical Union No. 48/CWA 14320, herein called the Union-Petitioner, filed a petition with the National Labor Relations Board, herein referred to as the Board, under Section 9(b) of the National Labor Relations Act, as amended, herein called the Act. A hearing on the issues raised by the petition was held before a hearing officer of the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ Both parties filed post-hearing briefs that have been duly considered. The Employer filed a Motion to Dismiss, which has also been duly considered.

3. The Union-Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

INTERVENOR

Atlanta Graphic Communications Local Union No. 8-M, hereinafter called the Intervenor, was present at the hearing. The parties stipulated that the Intervenor is not claiming to represent any of the employees at issue in this proceeding and that the Union is not seeking to represent employees currently represented by Intervenor, including plate makers, cameramen and strippers and those employees engaged in the plate making, camera or stripping processes. Based on those stipulations, the Intervenor withdrew from the proceedings.

POSITION OF THE PARTIES

The Union-Petitioner has represented employees in the Employer's prepress department for over 30 years. It now seeks to clarify the existing prepress department bargaining unit² consisting of approximately 30 employees, to include certain employees in the newly created Operations Technical Support (OTS) department. The Union-Petitioner asserts that the OTS group performs maintenance previously done by bargaining unit machinists. Although the positions are newly created, the work, Union-Petitioner argues, is a natural evolution of former unit functions and should be included in the unit. The Union-Petitioner initially sought to include all eight non-supervisory OTS employees. In its post-hearing brief, the Union-Petitioner confirmed that it was not seeking to represent OTS department manager Scott Brian. The Union-Petitioner also stated that it was not seeking to represent three more OTS employees, J.D. Waldrop, Cal Chowning and Mike Meager on the basis that those employees are either managerial or technical employees. Therefore, the Union-Petitioner apparently now seeks to

² The unit description in Article 1 (Recognition) of the current collective bargaining agreement between the Employer and the Union is "all employees in the prepress department." The current agreement is effective from September 18, 2000 through October 2, 2005.

include only the following employees: Billy Turlington³, Wesley Rhodes, Charles Elliott, David Powell and Allen Bunch.

The Employer contends that OTS department employees constitute a separate entity and that they do not share a community of interest with the prepress department employees. The parties stipulated that there is no history of collective bargaining regarding OTS employees.

I find that the employees in the newly established OTS department do not share the requisite community of interest and, therefore, should not be included in the prepress unit. Accordingly, I am therefore dismissing the petition. Before turning to the reasons for my conclusion, I describe below the Employer's operations and the development of the OTS department.

GENERAL OPERATIONS

The Employer publishes a daily newspaper. Its operations encompass its downtown headquarters, a Fulton County Production Plant (FCPP), a Gwinett County Production Plant (GCPP) and REACH facilities. Many departments are involved in the production and distribution of the newspaper, including "ad sales, "ad composition and layout", the newsroom, prepress, plate-making, pressroom, newsprint, mailroom and circulation/distribution departments. Many of these departments are represented by labor organizations. In fact, the Employer is presently a party to approximately eight different collective bargaining agreements.

The newspaper is comprised of two components: advertisements and news. On the advertising side, the sales department sells advertisements to customers. Then various advertising departments, including "ad creative" and "ad support", compose the advertisements and lay them out on the page. The newsroom and news layout departments are responsible for

the news component of the paper. After the advertising and news departments have developed their respective parts of the paper, the pages are sent to the prepress department, where each page is reviewed and revised, if necessary. The pages are then sent to the plate-making department where plates for printing the pages are created. The plates go to the pressroom and newsprint departments where the pages are printed. The printed newspaper goes to the mailroom where advertising inserts are added to the paper and where the papers and inserts are bundled for delivery.

In recent years, computer systems have substantially automated the process of assembling pages in final format for printing. "Pagination" refers to the development of an integrated computer system, which allows the advertising and news components to be entered, manipulated and transmitted digitally. The process became fully digital by late 2001. Before digital pagination, each department had stand-alone equipment. The news and advertising departments produced a separate physical product that was not put together until it reached the prepress department. Now each department simultaneously inserts data into the same system.

THE PREPRESS DEPARTMENT

The function of the prepress department, sometimes referred to as the "composing room," has always been to combine news and advertising copy into pages and to put the pages together in final format for printing. This used to be an extremely laborious process that involved hundreds of employees and much specialized machinery. Now prepress equipment is similar to that used in other departments and the prepress department does most of its work on Macintosh computers. The new equipment requires only light maintenance performed primarily by the operators themselves.

³ The record reflects that Turlington is the OTS assistant department manager. The Union-Petitioner evidently is not seeking to exclude Turlington on the basis that he is a supervisor.

At one time, there were around 300 employees in the prepress department. Now there are 30. There have been relatively few layoffs as the decrease in employee complement has been accomplished mainly through attrition or by transfers to other departments.

Various provisions of the collective bargaining agreement define the scope of the prepress unit. The recognition clause provides that the Union is “the exclusive bargaining representative of all employees in the prepress department.” Article II of the agreement provides that “work assigned by the Publisher to the employees covered by this agreement will include work of the type traditionally performed in the prepress department such as floor work, proofreading, imaging, CAM and output including maintenance and ad composition or variations of these functions as the functions change due to new technology, but this does not mean that all or any portion of any functions must be exclusively performed in the prepress department or be performed by employees covered by this agreement.”

Article X of the collective bargaining agreement provides that the “following classifications are recognized: floor, proof-reading, output, imaging, job shop, CAM operator and machinist.” However, as of the date of the hearing, the only extant classifications were CAM, output and imaging. The floor, proofreading, and machinist positions have all been abolished. The status of the job shop classification is not readily apparent from the record evidence. Seemingly, it is still extant, but no longer a part of the prepress department.

CAM operators insert camera-ready ads and release ads. Imaging employees scan and insert graphics and output employees proof and check the page and send it to plate-making. Employees in these classifications do not perform any work outside the prepress department. Prepress employees perform their work on the same computer system as the advertising, news and plate-making departments.

No prepress employees are qualified to perform OTS duties. They do, however, change out toner, replace paper and perform other low-level maintenance on their own equipment. Virtually all of the equipment that the prepress machinists maintained is no longer in service.

THE PREPRESS MACHINISTS

Before the advent of digital equipment, machinists in the prepress department performed mechanical maintenance on equipment that was located within the physical boundaries of the department. Machinists cleaned tanks, mixed chemicals, changed belts and performed other mechanical tasks to keep the machines running. When digital equipment was introduced, the IT and Special Electronics Maintenance (SEM) departments were formed to address electronics and computer maintenance issues. Machinists initially were not allowed to service the electronic aspects of the system because they were not trained to do so and could damage the machines or injure themselves. Machinists took care of problems on electronic equipment up to a certain level. They generally checked the power supply as well as the cable connections and rebooted the system. If there was still a problem, they would call SEM.

As the volume of mechanical work decreased, the volume of electronics and computer work increased. The record shows that by the time the OTS department was formed, machinists' duties were not confined to strictly mechanical tasks. Prepress machinists entered software commands to diagnose equipment problems, replaced hard drives and assisted with virus patches. As described more fully below, some machinists took it upon themselves to learn more advanced computer skills. In later years, machinists also did work outside of the prepress department. Several former machinists testified that they maintained equipment in the pressroom, job shop, reel room and silver recovery. Some machinists were qualified in other classifications and sometimes did production work.

Before OTS was formed, there were five machinists in the prepress department: Allen Bunch, Richard Grice, Wesley Rhodes, Billy Turlington and trainee Todd Shennum. As discussed more fully below, Rhodes and Turlington interviewed for and received OTS positions. Grice retired shortly before OTS became operational. In January 2004, when the machinist classification was eliminated, only Bunch and Shennum remained. Bunch was transferred to OTS.

Shennum had been with the Employer for about 10 years and in late 2003, he became a machinist trainee. In his spare time, Shennum worked with scrapped computers to learn how to build them. He testified that he wanted to apply for the OTS department, but Scott Bryan⁴ told him that he would need to have additional training and certifications to qualify. When the machinist classification was eliminated, he was moved back to his original production position as a CAM operator. He occasionally assists other prepress employees with troubleshooting and maintenance such as clearing jams and replacing toner cartridges. If there is a problem he can't fix himself, he calls OTS.

Several witnesses testified that, beginning in 2001 when the production process became fully digital, machinists did not really have enough work to keep them busy. The exact timeframe is not clear, but it also appears that other departments no longer had regular machinists. By the time the remainder of the old equipment was scrapped and removed in 2003, there was not enough work for a full-time machinist.

THE OTS DEPARTMENT

In late July 2003, the Employer posted a notice about job opportunities in the new OTS department. Qualified applicants “[m]ust possess basic understanding of the different flavors of

⁴ Bryan was an executive foreman who supervised the prepress machinists until he became the manager of the OTS department.

Mac/PC OS (operating systems), networking and specific production applications.” Operations Manager Rod Miller interviewed candidates for the positions and testified that OTS was a diverse group with a broad range of knowledge and skills, “the best of the best” from several departments. The Employer needed technicians who understood the entire system because the technology reached across departmental lines. Before the formation of OTS, only one or two people knew how to maintain several important systems. Consequently, there was a need to “cross train” employees so that they could provide back-up for each other and more fully integrate technology among departments. There were no specific educational requirements and Miller understood that no single person would have all the knowledge and skills the team required. Rather, he was seeking a broad range of abilities for the team.

OTS was initially comprised of Scott Byran, Billy Turlington, J.D. Waldrop, Cal Chowning, Mike Meager, Wesley Rhodes and Charles Elliot. Bryan, Turlington, Rhodes and Elliot⁵ were all from the prepress department. David Powell and Alan Bunch were later added to the team.

The Employer announced the formation of OTS on September 15, 2003. A memorandum from Rod Miller stated that the group would provide applications development and support for production operations at the FCPP, GCPP and job shop. OTS is responsible for repairing and maintaining production equipment and computer systems and for developing new systems. It supports all production departments at all the Employer’s facilities. The Employer has other departments that are responsible for providing support to the advertising, news, and circulation departments.

⁵ Elliott, as discussed more fully below, had been a trainer in the prepress department.

The OTS department is located in the FCPP, on the same floor as prepress, layout, advertising, accounting, electronic ads and ad creative departments. At one point, the prepress department took up most of the floor. As newer, smaller equipment came in, less space was required. In the summer of 2003, the remainder of the old equipment was removed and the floor space was renovated and reconfigured. The renovations created room for several new departments, including OTS, circulation, accounting and ad creative. The OTS office is in the area formerly occupied by the prepress machinists.

As noted earlier, OTS department manager Scott Bryan was an executive foreman and supervised the prepress machinists until he became manager of the OTS department. Initially, he previously reported to prepress department manager Kerry Bryan. However, he now reports directly to Operations Manager Rod Miller, the same person to whom Kerry Bryan still reports. In other words, Scott and Kerry Bryan are now on the same level of management.

J.D. Waldrop has worked for the Employer since 1987 in several computer service and technology positions. His present duties in the OTS department include maintaining the BURT system, a software package that manages advertising inserts. The BURT system is located at the GCPP facility and Waldrop generally spends two days a week there. He is also responsible for maintaining the Albitrol and GE systems, which monitor the inventory of newsprint and the transfer of newsprint rolls to the presses. Waldrop works with several departments at the Gwinnett and Fulton County Production Plants, including circulation, advertising and the mailroom. His only contact with the prepress department was when he performed some technology support for prepress equipment in 2000 or 2001.

Waldrop and Mike Meager are the most experienced OTS employees and other OTS employees come to them with problems and questions. Waldrop had some electronics training while in the military, but in large part is self-taught.

Mike Meager began working for the Employer in 1989 as an assistant manager in the Special Electronics Maintenance (SEM) department. That department was responsible for maintenance and repair of electronic equipment and provided technology support to the production departments, including the newsroom, prepress and pressroom. When SEM was disbanded in 1997, Meager continued to perform electronics support and maintenance in several departments, including prepress and plate-making, until the older equipment was phased out. The machinists performed physical maintenance on the equipment, such as cleaning, lubricating and replacing parts. The machinists would initially diagnose problems and then call Meager if it was something they could not fix. Meager has never performed production work in the prepress department. Like others in the OTS department, Meager does not know how to use the applications software on the computers in prepress, only how to repair the hardware and the operating systems.

In the OTS department, Meager is primarily responsible for the Totalizer, a system that he developed to monitor production and minimize waste. That system is located in the pressroom and mailroom at the GCPP and FCPP facilities. Meager, along with Billy Turlington and Charles Elliott, also works on the GUS and Ink Manager Systems. Turlington and Elliott are training Meager on the Thin Client and Lotus Notes systems and J.D. Waldrop is training him on the BURT system. The Thin Client system is a mini-server that supports a smaller group of machines than a regular mainframe server would support.

Charles Elliott was a trainer in the prepress department. In the OTS department, he services the GUS system located in the FCPP and GCPP and the DT system in the newsroom, advertising and prepress departments of the FCPP. He also works on the DT5 upgrade in the newsroom, advertising, ad creative, and plate-making departments and on the Marimba system, DTI software and Macintosh computers, which are located throughout all of the Employer's

departments. The Marimba system sends out updates on a regular basis so that all computers have up-to-date versions of software and virus protection.

Cal Chowning worked in several computer-related positions before joining OTS. He has never worked in the prepress department. Chowning is responsible for the BURT, Microsoft Access, and DT5 systems. These systems are located in various departments, including GWPP, prepress, advertising and news departments.

Billy Turlington was a machinist in prepress before he became a part of OTS. As a machinist, he performed mechanical maintenance and repairs on prepress equipment and other maintenance functions such as changing light bulbs, cleaning the glass on copiers and changing water filters. The equipment that he maintained and repaired as a machinist, including Bidco and ECRB scanners, full pager proofers and laser image setters, is no longer used. When he became a machinist in 1996, there was a weekly and monthly service chart showing the prepress equipment that had to be maintained. The machinists were very busy with “messy work” such as changing and mixing chemicals and oiling and cleaning various parts of the machines. For electronic maintenance or repairs, he called the SEM department. He and other machinists also performed production duties.

Beginning in 1998, the machinist work began to dwindle as the older equipment was phased out and replaced. Turlington testified that “I saw the work going...I didn’t want to stay and be a machinist, so I started working on calls that I shouldn’t have been working on—electronics calls.” Turlington read books, took classes, looked online or consulted people like Mike Meager and independently learned to perform electronic repairs. It was Turlington’s understanding that this was outside the scope of his machinist duties and qualifications.

Turlington interviewed for a position in OTS and was hired as the assistant department manager. Turlington services the GUS system in the FCPP and GWPP facilities, the DT and DT-5 systems, the Ink Manager system and Palletizer system, which controls the automated

bundling of loose newspapers after they leave the pressroom. He also services PCs, Macintoshes, and Thin Clients located throughout various departments and has several network and vendor certifications, including Microsoft and HP. Other than testimony that he “fills in” for department manager Scott Bryan, the record is silent as to any specific managerial or supervisory duties Turlington may perform in his capacity as assistant department manager.

Wesley Rhodes was a prepress machinist before coming to OTS. He assists Turlington with the Palletizer system.

David Powell was a manager in the Scitex department, which managed the software related to color printing. His work in the OTS department also involves color printing. He also works on Thin Clients and the DT5 upgrade. His duties involve systems in prepress, pressroom and advertising support.

Allen Bunch was a prepress machinist before he transferred to OTS in January 2004. He performed mechanical maintenance and repairs on prepress equipment. In his capacity as a machinist, he did some work in other departments, including silver recovery, plate-making and the reel room. He did some manual work on computers, including switching out mice and keyboards and taking printers to other departments and plugging them in. Someone else would run the installation software. If Bunch encountered an electronics problem that he could fix, he did, but he mostly relied on other departments such as SEM or IT for electronics support.

When the machinist classification was abolished, Bunch was transferred to OTS. He performs what limited machinist duties remain and is learning new computer skills. He does about two days per month of machinist work in the prepress department. He now performs software and hardware maintenance, including replacing CD burners, hard drives and floppy drives. He installs Thin Clients and flash memory, performs patches for Windows and refurbishes printers. In comparing his work as a machinist to his work in OTS, Bunch testified

that, “it’s totally different now than it was. Servicing processors is probably the only thing that I do that I did before.”

Production departments call OTS whenever they have a problem. Witnesses testified that OTS can resolve almost all problems with production systems. If OTS cannot resolve the problem, they consult the IT department. OTS works closely with the IT department and with other technology support groups.

The amount of time OTS employees spend in any particular department is entirely dependent on the nature of the calls they receive. OTS could spend five minutes a week or an entire week in the prepress department. Waldrop and Chowning are the only members of OTS who never perform work in the prepress department. No specific OTS employee is assigned to support prepress or any other department and no one in particular does more work in prepress than anyone else.

LEGAL ANALYSIS AND CONCLUSION

As a general rule, the Board has followed a restrictive policy in determining whether a new group of employees should be added to an existing bargaining unit because it forecloses the employees’ basic right under Section 7 to select their own bargaining representative or to choose not to have one. Compact Video Services, 284 NLRB 117, 119 (1987); Towne Ford Sales, 270 NLRB 311 (1984). The Board has held that accretion is appropriate only where the disputed employees display “little or no separate group identity,” and share “an overwhelming community of interest” with employees in the preexisting unit. Ready Mix USA, Inc., 340 NLRB No. 107 (2003); Dennison Mfg. Co., 296 NLRB 1034, 1036 (1989). See also Giant Eagle Markets Co., 308 NLRB 206 (1992); Safeway Stores, 256 NLRB 918 (1981).

In The Sun, 329 NLRB 854 (1999), a unit clarification case involving a prepress or composing room unit, the Board established the following burdens and presumptions when a unit is defined by the work performed:

If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate.

In determining whether the presumption has been rebutted, we will consider community-of-interest factors that relate to changes in the nature and structure of the work. As discussed above, however, a showing that technological innovation has affected unit work will not suffice to exclude new classifications performing that work from the unit unless the work has changed to such an extent that the unit would no longer make sense if it included the disputed employees.

Id. at 859. The unit description in question covered all employees who performed any work “which begins with the markup of copy and continues until the material is ready for the printing presses [but excluding proofreading].” Id. at 854. The Board concluded that the disputed employees clearly performed work that was within that unit as it had been described and agreed upon by the parties themselves. Id. at 860. The Board stated that it was applying this apparently more restrictive standard only where the unit is defined by the work performed. Id.

As the Board made clear in subsequent cases, different considerations apply when a bargaining unit is defined not by duties but by job titles. Thus, where the bargaining unit included “all production and maintenance employees at the Employer’s plant, including plant clericals and analysts,” the Board continued to apply its traditional accretion analysis. E.I. Du Pont de Nemours, Inc., 341 NLRB No. 82 (2004).

The Employer contends that the accretion analysis is appropriate in the instant case and that in order for OTS employees to be included in prepress unit under an accretion analysis, it

must be shown that those employees (1) have little or no separate group identity and (2) share an overwhelming community of interest with the prepress department.

On the other hand, the Union-Petitioner contends that the prepress unit is functionally described and that since OTS employees perform similar functions as the former prepress machinists, the standards established by the Board in The Sun should apply.⁶ Under that analysis, the disputed employees would be presumptively included in the unit if: 1) the unit is one that is defined by its functions rather than its members, 2) OTS employees perform functions similar to the unit functions so described and 3) the unit functions they perform are not incidental or insignificant. Even if all three requirements necessary for the rebuttable presumption of inclusion to apply under a “similar functions” analysis are met, OTS employees may still be excluded if they are so dissimilar that their inclusion would destroy the appropriateness of the unit.

Under both the accretion standard and the “similar functions” analysis, community of interest factors must be assessed. If the “similar functions” standard is applied, there must be only minimal community of interest in order to include the disputed employees in the unit. Under the accretion analysis, there must be an “overwhelming” community of interest.

In deciding whether to clarify a group of employees into an existing bargaining unit, the Board has identified two community of interest factors as especially important. One of these is the degree of interchange between unit employees and the employees in question. E.I. Du Pont, *supra*; Mac Towing, 262 NLRB 1331 (1982); Judge & Dolph, Ltd., 333 NLRB 175, 183 (2001). The other is the day-to-day supervision of those employees. E.I. Du Pont, *supra*; Save-It Discount Foods, 263 NLRB 689 (1982). The Board has also considered such factors as

⁶ At the outset of the hearing, counsel for the Union stated that the Union-Petitioner was contending that OTS employees were an accretion to the prepress department. It is clear from the record that the Union was merely using the word “accretion” as a synonym for “addition” and did not intend to stipulate as to the legal standard to be applied.

similarity of terms and conditions of employment; whether there are significant differences in skills, functions, qualifications, wages, and assigned duties; and the degree of functional and administrative integration. See J.I. Dolph, *supra*, 333 NLRB at 181; Dennison Mfg., *supra*, 296 NLRB at 1036; Compact Video, *supra*, 284 NLRB at 119; see also Archer Daniels Midland Co., 333 NLRB 673, 675 (2001); Massachusetts Electric Co., 248 NLRB 155 (1980); Jos. Schlitz Brewing Co., 192 NLRB 553 (1971); Pullman Industries, 159 NLRB 580 (1966); and Aerojet-General Corp., 185 NLRB 794 (1970).

However, the Board will not rely on factors solely within the employer's control. The Sun, 329 NLRB at 859. Factors such as wage rates, hours and benefits would of course be different between unit and non-unit employees. Therefore, I will not consider differences in pay, hours and benefits between prepress and OTS. As set forth below, I nonetheless conclude that OTS employees have no community of interest with the prepress department and cannot be appropriately included in the existing prepress unit under either analysis.

Substantial evidence was presented about the type of work prepress machinists performed immediately before the OTS department was created. Clearly, a minimal amount of the work performed by the work of some machinists in the past is similar to the present work of some members of the OTS department. The record establishes that certain machinists performed some limited software and hardware tasks. It is also clear that machinists did some work in departments other than prepress. However, it is equally clear that this resulted both from a lack of machinist work in the prepress department and from machinists' individual initiatives to learn skills outside the scope of their machinist duties. This work was not a "natural outgrowth" of bargaining unit work, but an indication that work in the bargaining unit was no longer sufficient to sustain its present employees.

The Board looks to the actual, existing composition of units and to employees actually working to determine the composition of units, not to abstract grants of recognition. Coca-Cola Bottling Co., 310 NLRB 844 (1993). Prepress equipment has always been maintained by both unit and non-unit employees. Machinists performed the day-to-day mechanical maintenance while specialized departments such as SEM and IT handled electronic and system-wide maintenance. Instead of demonstrating similarities between prepress machinists and OTS employees, the record demonstrates that technology support has evolved beyond the confines of a single department, while equipment requiring very little maintenance allows production employees to, in effect, be their own machinists.

Changes in technology can affect the scope and composition of a bargaining unit. While it is well settled that an employer may not use improved technology as an excuse to remove positions from the bargaining unit, the Board also recognizes that technological advances sometimes produce a bargaining unit that is no longer appropriate. In U.S. West Communications, Inc., 310 NLRB 854 (1993), the Board found that changes in technology, corporate, administrative and operational policies had caused a unit of toll technicians to lose their separate identity. The equipment these technicians worked on in the past was distinct from the equipment local technicians maintained and repaired. However, improved technology removed the distinction between the two groups and a separate unit was no longer appropriate. Id. at 855.

The present nature of the work in prepress is that a handful of employees perform the job on low-maintenance equipment. The work has in fact changed to such an extent that the department no longer needs a full-time support staff. The type of maintenance formerly performed by the unit machinists requires only two or three days a month to perform. This would certainly indicate that the unit functions OTS employees perform are “incidental or insignificant.”

The current job functions of OTS and prepress are entirely different. The prepress department manipulates data to format newspaper pages. Their work occurs in a single department, they report to a separate supervisor and they are not qualified to perform work in the OTS department.

OTS provides technical support and service to a number of departments and facilities. There are a few OTS employees who may have been qualified at some point to perform prepress work, but there is no evidence that they still perform any production-related duties. In E.I. DuPont, 341 NLRB No. 82 (2004), the Board concluded that the newly created PSM examiner position could not be included in the production and maintenance unit. The Board noted that, in contrast to most unit employees, the PSM examiner did not play a part in the actual production process. Id., slip op. at 3. The Board also found it significant that the examiner's interaction with unit employees was outweighed by his more substantive contacts with non-unit employees and therefore, he possessed a greater group identity with non-unit employees. Id.

While most OTS employees have frequent contact with the prepress department, there is no interchange between these two groups of employees, both of whom have separate and different supervision. The fact that some OTS employees used to be members of the prepress department is not sufficient to continue to align their interests with that department.

Accordingly, based on the above, I find that there is no community of interest between the prepress and OTS departments and that, under any legal analysis, OTS employees should not be included in the prepress bargaining unit. Accordingly, I shall dismiss the petition herein.

ORDER DISMISSING PETITION

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by November 17, 2004.

Dated at Atlanta, Georgia, on this 3rd day of November, 2004.



Martin Arlook, Regional Director
Region 10
National Labor Relations Board
233 Peachtree St., N.E., Harris Tower – Suite 1000
Atlanta, Georgia 30303-1531

385-7533-2001
385-7533-2040